

REMARKS

The only issues outstanding in the Final Rejection mailed September 20, 2007 are the rejections under 35 U.S.C. §103. Reconsideration of these issues, in view of the following discussion, is respectfully requested.

Rejection Over Sakuta and Shin

Claims 8-23 remain rejected as allegedly being obvious under 35 U.S.C. § 103 in view of Sakuta (EP 0 501 791) in combination with Shin (US 4,937,069). This rejection is again respectfully traversed.

As will be recalled, Sakuta (EP '791) discloses a group of silicone polymers that can be swollen with silicone oils to obtain pasty silicone compositions which can be used to stably and uniformly disperse water. See page 2, lines 5-8. As described at page 2, lines 35-40 of Sakuta, in the cosmetics field, there are often used compositions which are formulated, not only with oils, but also with water. In such compositions surface active agents are usually added, which can irritate the skin. Moreover, it is said to be difficult to disperse silicone oils and water uniformly and stably. For this reason, one of the objects of Sakuta is to obtain "a pasty silicone oil composition wherein water can be uniformly, stably dispersed in the composition without use of any surface active agent." See page 2, lines 47-48. The pasty composition of Sakuta is prepared by subjecting 100 parts by weight of the silicone polymer and 10 to 1000 parts by weight of a silicone oil to kneading under shearing conditions. The polymer, due to its good swelling properties in silicone oils, is said to provide a uniform pasty composition, when combined with silicone oils and kneaded as described. Further, this composition can disperse powders or pigments. To render the pasty composition useful as a cream or "cake-shaped molding" for cosmetics, the pasty composition can be dispersed in water without resorting to the use of surface active agents. See, e.g., page 5, lines 4-9 and 26-30.

From the above discussion, it is maintained to be evident that, as it relates to cosmetic compositions, the disclosure of Sakuta is directed to aqueous cosmetic compositions wherein water is dispersed in the pasty silicone composition. This is also apparent from the Examples. In

each of Examples 1 - 4, water is added to the pasty composition to obtain a creamy composition. Also, Applications 1 and 2 on page 8-9, which involve water dispersed in the pasty composition, are directed to a face cream formulation and a makeup foundation formulation.

Sakuta thus does not disclose or suggest non-aqueous cosmetic compositions. Nor does Sakuta disclose or suggest a non-aqueous dermatic cosmetic for perspiration control comprising 50 to 500 parts by weight of an aluminum compound having perspiration control activity. Compare, e.g., applicants' claim 8.

In the Final Rejection, it is evident that there is a fundamental misunderstanding of the present claims. It is argued that the “instant claims are drawn to a nonaqueous material and not a nonaqueous product... It is not recited in the instant claims that the material is used only for nonaqueous products.” The present claims indeed recite a “nonaqueous material.” In order for such a nonaqueous material to be obvious over the disclosure of Sakuta, it is necessary for one of ordinary skill in the art to be motivated to produce a nonaqueous material in light of the disclosure. In an apparent effort to bolster such a position, the Office Action looks to “application 2” at page 8 of Sakuta, see page 4 of the Office Action. However, this example, in which water is added to a material to produce the final product, does not suggest one of ordinary skill in the art the production of nonaqueous materials other than as an intermediate in the production of a final product. In other words, the reference does not suggest the production of a nonaqueous material, per se.

Thus, the Office Action bases its conclusion of obviousness upon an intermediate product of the reference. However, it is well established law that one of ordinary skill in the art does not possess the requisite motivation to stop a reference synthesis and experiment with an intermediate product thereof, see *In re Lahu*, 747 F.2d 703, 223 USPQ 1257 (Fed.Cir. 1984). See also *In re Jyurik*, 596 F.2d 1012, 201 USPQ 552 (CCPA1979) where the Federal Circuit's predecessor Court held that just because “an intermediate/end product relationship exists”, “such a relationship does not render obvious the stopping of the synthesis of the end product and isolating the intermediate.” In the present situation, it is clear that patentees teach the production of aqueous final products. There is simply no motivation of one of ordinary skill in the art to stop such a synthesis and secure the nonaqueous intermediate. One of ordinary skill in the art is

simply not taught that such an intermediate would have any utility, and thus motivation to isolate it is lacking. Regardless of whether the claimed products herein can be used to make aqueous formulations, those products are claimed in non-aqueous form. The reference does not suggest this.

The secondary reference, Shin, is cited to arguably provide motivation to produce antiperspirant compounds, i.e., containing aluminum as in present claim 8. However, unlike Sakuta, Shin discloses a substantially anhydrous antiperspirant composition. Indeed, patentees disclose problems associated with the use of hydrous compositions. Accordingly, Shin provides no motivation for one of ordinary skill in the art to modify the aqueous material, of the primary reference. Moreover, Sakuta does not disclose that the mixture of the examples before water is added has antiperspirant properties, e.g., is not tacky or has reasonable usability. Thus, the use of silicones in the aqueous system of Shin provides no basis to add these materials to a nonaqueous material.

Accordingly, it is submitted that the references, singly or in combination, do not suggest the presently claimed materials, and withdrawal of this rejection is respectfully requested.

Rejection Over Sakuta and Powell

Claims 24-47, 50 and 52-57 remain rejected under 35 U.S.C. §103 over Sakuta taken with Powell (U.S. Patent No. 6,060,546). Reconsideration of this rejection is respectfully requested. Sakuta is discussed above. Powell is disclosed in order to provide an arguable teaching of components used in *nonaqueous* silicone-based cosmetic compositions. However, inasmuch as it is not obvious to produce nonaqueous compositions from Sakuta, it is submitted that the disclosure of the nonaqueous materials in Powell would simply not be combined by one of ordinary skill in the art. Moreover, Powell does not suggest materials comprising a combination of cross-linked silicones with Vitamin C. The references do not teach the concept of combining water-degradable Vitamin C with hydrophilic cross-linked silicones, as in the rejected claims. Accordingly it is submitted that this combination of references simply does not suggest the rejected claims, and withdrawal of this rejection is respectfully requested.

Rejection Over Sakuta with Kilgour

Claims 8-50 and 52-57 remain rejected under 35 U.S.C. §103 over Sakuta taken with

Kilgour (U.S. Patent No. 6,262,170). Reconsideration of this rejection is again respectfully requested.

Again, the Office Action argues, on page 6, that Kilgour is cited simply for a teaching of additional components in cosmetic compositions. However, this neglects the important question of whether one of ordinary skill in the art would extract those teachings for use with the primary reference. In fact, one of ordinary skill in the art would not do so. It is clear that silicone elastomer described in Kilgour is hydrophobic since it does not have any hydrophilic groups. Therefore, Kilgour references does not suggest this invention, since cross-linked silicone of the claims is completely different physically. Moreover, since Kilgour is devoid of any suggestion of the use of a silicone polymer containing oxyalkylene units or other hydrophobic structures, Kilgour simply would not be combined by one of ordinary skill in the art with Sakuta, to modify compositions that contain silicone polymers having oxyalkylene units.

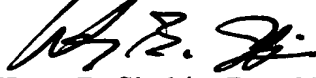
It is accordingly respectfully submitted that this combination of references also fails to suggest the present claims, withdrawal of the rejection is respectfully requested.

Conclusion

None of the references, singly or in combination, would be combined by one of ordinary skill in the art in a way which would result in the presently claimed materials. Accordingly, withdrawal of the rejection is respectfully requested. Should the Examiner have any questions or comments, he or she is cordially invited to telephone the undersigned at the number below.

The Commissioner is hereby authorized to charge any fees associated with this response or credit any overpayment to Deposit Account No. 13-3402.

Respectfully submitted,



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